

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
RURAL CELLULAR ASSOCIATION)	RM-11497
)	
Petition for Rulemaking Regarding)	
Exclusivity Arrangements Between)	
Commercial Wireless Carriers and)	
Handset Manufacturers)	

**REPLY COMMENTS OF THE
NORTHEAST COMMUNICATIONS OF WISCONSIN, INC.**

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February 20, 2009

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**REPLY COMMENTS OF
NORTHEAST COMMUNICATIONS OF WISCONSIN, INC.**

Northeast Communications of Wisconsin, Inc. dba Cellcom, on behalf of itself and its affiliates¹ (collectively "Cellcom"), hereby submits these reply comments in response to the Commission's Public Notice seeking comment on Rural Cellular Association's petition .

Cellcom, which has been providing wireless service in rural northeast Wisconsin since 1987 and operates a CDMA network, agrees with RCA, and those commenters that would prefer to see these exclusive arrangements end as quickly as possible and believe that the FCC has the legal authority to and should launch an investigation into the growing use of exclusive handset arrangements and adopt rules that prohibit their use so that handsets are offered on a non-discriminatory basis.²

¹ Cellcom's affiliates for the purpose of this petition include the following entities: Brown County MSA Cellular Limited Partnership; Northeast Communications of Wisconsin, Inc.; Nsighttel Wireless, LLC; Wausau Cellular Telephone Company Limited Partnership; Wisconsin RSA #4 Limited Partnership; and Wisconsin RSA #10 Limited Partnership.

² See Comments of the *Ad Hoc* Public Interest Spectrum Coalition ("PISC"); Comments of the Blooston Rural Carriers; Comments of California RSA No. 3 Limited Partnership D/B/A Golden State Cellular; Joint Comments of Cellular 29 Plus & Lyrinx Wireless; Comments of Cincinnati Bell Wireless, LLC; Comments and Further Comments of Corr Wireless Communications, LLC; Comments of Jim Chen (on behalf of Cellular South); Comments of MetroPCS Communications, Inc.; Comments of Nex-Tech Wireless, LLC;

I. CONSUMERS ARE HARMED BY EXCLUSIVE HANDSET AGREEMENTS

Cellcom believes that consumers are harmed by exclusive handset agreements.

Consumers are attracted to a particular carrier, in large part, because of the phones they offer, particularly the most technologically-advanced products.³ Cellcom finds that the biggest hurdle in competing with the nationwide carriers is overcoming a customer's or potential customer's desire to purchase a specific exclusive handset that the smaller carrier or new entrant is unfairly prohibited from selling to customers.⁴

Under the present distribution scheme, smaller carriers like Cellcom are at the end of the distribution line when it comes to getting access to new handset models from manufacturers.⁵ Even though Cellcom can compete against larger carriers on price, coverage, flexibility of service, and customer service, it is placed at a competitive

Comments of NTELOS, Inc.; Joint Comments of RTG, OPASTCO and NTCA; Comments of South Dakota Telecommunications Association; Comments of TCA, Inc.

³ Comments of MetroPCS Communications, Inc. at 6 (citing the Google study that more than one in two wireless consumers said handsets played a major role in their purchase decisions). *See also*, Comments of Cellular 29 Plus and Lyrix Wireless at 1 (the inability to purchase quality, competitive handsets in a timely manner "is by far the most difficult competitive hurdle" they face, largely because customers are increasingly choosing their wireless carriers based on the handsets offered by the competing carriers.)

⁴ *See also* Comments of California RSA No. 3 Limited Partnership d/b/a Golden State Cellular ("Golden State"), at 2-3 (noting that Golden State is frequently unable to attract that new customer or retain an existing customer because of its inability to carry a popular handset); *see also* Comments of NTELOS Inc., at 4 ("Although NTELOS offers handsets with similar features, it is an uphill battle to convince consumers to try a handset other than those that are heavily advertised. Consequently, even with very competitive rate plans and services, NTELOS loses a significant number of sales opportunities because we are unable to offer the exclusive handsets."); Comments of Bob Mauer, General Manager, Cellular 29 & Lyrix Wireless, at 1 ("The inability to secure and purchase quality, competitive handsets in a timely manner is by far the most difficult competitive hurdle I have to deal with."); Comments of MetroPCS Communications, Inc., at 8 ("Many new entrants do not have the scale or scope to overcome the exclusive arrangements negotiated by the dominant carriers, which means that new entrants will be left with non-exclusive handsets.").

⁵ *See also* Comments of Core Wireless Communications, LLC ("Corr Wireless") at 1-2; *see also* Comments of Golden State, at 3-4 (the distribution disparity was brought to the forefront in the context of the FCC's HAC requirements in which Tier III carriers were consistently having difficulty meeting the requirements because HAC-compatible phones were generally not available to them, but had already been made available to the nation's largest carriers.).

disadvantage because it cannot come close to matching the handset offerings of the larger carriers, creating an unfair competitive marketplace for the provision of wireless service. Moreover, permitting exclusive handset arrangements to continue is simply bad policy. Exclusivity arrangements force consumers to switch providers, pay a premium for their desired handset, and enter into multi-year service agreements with the exclusive provider.⁶

The end result, as explained by the *Ad Hoc* Public Interest Spectrum Coalition (PISC), a coalition that includes the Consumer Federation of America, Consumers Union, Free Press, Media Access Project, the New America Foundation, Public Knowledge and U.S. PIRG is that exclusivity provisions:

...exaggerate[] the harms of consolidation by providing consumers with an undesirable choice between the service offered by a less expensive or higher quality rural or small wireless carrier, and service offered by a larger provider who may not offer the best service or the best rate but who offers the latest in popular wireless devices... Breaking open handset exclusivity arrangements would allow consumers to purchase new and popular wireless devices with any carrier, which would in turn break the control any individual carrier might be able to exert over the development and features of new devices, and would result in increased innovation for wireless devices.⁷

II. THE COMMISSION MUST FACILITATE FAIR COMPETITION BETWEEN THE NATION'S LARGEST AND SMALLEST CARRIERS

Cellcom agrees that smaller carriers must have access to the same handsets as the largest carriers in order to compete with them on a level playing field.⁸ If not, then the ability of these carriers to effectively compete with the nation's largest carriers is significantly harmed. As one commenter succinctly noted, many small rural carriers face

⁶ See also Cincinnati Bell Wireless LLC Comments at 4-5.

⁷ Comments of PISC, at 3-4.

⁸ See MetroPCS Comments at 9.

competition in their markets from large national carriers who offer the most popular handsets pursuant to exclusive deals. A direct result of this discriminatory access to handsets is the migration of customers from rural carriers to their larger in-market competitors.⁹ Cellcom attributes most of its customer churn directly to its inability to access the most popular handsets. Small rural carriers like Cellcom cannot effectively compete against carriers such as AT&T who offers the Apple's iPhone when they are only allowed access to the most basic low-end handsets. The Commission must ensure that customers are choosing wireless carriers based on factors such as price, service offerings, and quality of service – factors that are clearly within every carrier's control and not because of a carrier's inability, due to unfair market conditions created by exclusive handset agreements, to get access to the most popular handsets. Further, as the "largest carriers acquire more and more customers, this increased disparity will accelerate the ability of the larger carriers to demand more and more exclusivity agreements while ensuring that particular phones are unavailable for longer periods of time to smaller wireless carriers," thereby severely restricting the ability of smaller carriers to compete.¹⁰

The Commission has taken analogous corrective action on numerous occasions, particularly in the auction context where, upon the realization that small carriers were at a financial disadvantage if they were forced to compete head-to-head with larger carriers for spectrum, the Commission established auction rules to level the playing field, such as setting aside spectrum for small carriers and establishing auction bidding credits which

⁹ Comments of RTG, OPASTCO, and NTCA at 2.

¹⁰ Comments of MetroPCS Communications, Inc., at 6.

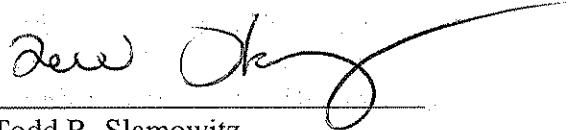
directly addressed the financing obstacles encountered by small carriers.¹¹ The Commission should take similar measures to correct a competitive imbalance in this proceeding, consistent with its obligations under the Communications Act of 1934, as amended.

III. CONCLUSION

Based on the foregoing, Cellcom requests that the Commission utilize its authority to protect consumers from anti-competitive behavior and implement rules barring exclusive handset arrangements to ensure that all wireless carriers compete on an equal basis.

Respectfully submitted,

**NORTHEAST COMMUNICATIONS OF
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¹¹ Comments of Golden State at 5.